THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.11259 of 2006

Dated: 08.06.2006

Between:

A.D Raju, S/o Goparaju, R/o Remulawada, Karimnagar District.

.... PETITIONER

AND

The Presiding Officer, Labour Court-II, Chandravihar Bhavan, Nampally, Hyderabad.

..... RESPONDENT

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W.P. No. 11259 of 2006

O r d e r:

This writ petition is filed seeking a Mandamus declaring the action of the respondent-Labour Court in upholding the validity of domestic enquiry vide order dated 05.12.2005 passed in I.D. No. 6 of 2004, as illegal and arbitrary, and consequently to direct the A.P.S.R.T.C authorities to re-conduct the enquiry.

The petitioner, while working with APSRTC as Conductor, was issued a charge memo dated 10.07.2002 on the ground of certain cash and ticket irregularities. The petitioner states that the Depot Manager, APSRTC, without supplying the entire material documents and without giving any opportunity to make proper representation, has issued charge sheet, dated 20.07.2002 and appointed an Enquiry Officer. He submitted that on the representation made by him on 26.07.2002, the Depot Manager supplied only seven documents and failed to supply the remaining documents. He submitted that he also made several representations

to the Enquiry Officer to furnish him relevant documents, but the Enquiry Officer without furnishing the same, submitted an *ex parte* report. Based on the enquiry report, by proceedings dated 08.01.2003, the petitioner was called upon to submit his objections/remarks, if any. Thereafter, the petitioner was issued show cause notice, to which the petitioner submitted his reply. Ultimately, the Depot Manager, vide proceedings dated 08.05.2003, removed the petitioner from service. Assailing the said proceedings, the petitioner raised an industrial dispute in I.D. No. 6 of 2004, and the Labour Court, on considering the validity of domestic enquiry as a preliminary issue, vide order dated 05.12.2005, impugned in this writ petition, held that the domestic enquiry was valid. Aggrieved by the said order of the Labour Court, the petitioner filed the present writ petition.

Learned counsel for the petitioner submits that the Enquiry Officer, without supplying relevant documents and without giving proper opportunity to the petitioner, conducted the enquiry and submitted an *ex parte* report, and that the Labour Court, without appreciating the same, erred in holding that the domestic enquiry was valid. He submitted that the Labour Court having given this finding, is not proceeding to consider the issues.

On the other hand, learned Government Pleader for Labour submits that since the petitioner has filed industrial dispute questioning the validity of the domestic enquiry, the Labour Court, upon considering the question as to the validity or otherwise of the domestic enquiry as a preliminary issue, held that the domestic enquiry was valid, and therefore, there are no reasons to interfere with the said finding.

Heard the learned counsel for the petitioner and the learned Government Pleader for Labour.

When a case of dismissal or discharge or termination of an employee is brought for adjudication, the Labour Court shall first decide as a preliminary issue the validity or otherwise of the domestic enquiry. The apex court in ***Cooper Engineering Ltd., v. P.P. Mundhe***[1], held as under:

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue……."

In the instant case, the Labour Court having considered the validity or otherwise of the domestic enquiry conducted by the respondents against the petitioner as a preliminary issue, held that the domestic enquiry is valid, and no exception can be taken to the award passed by the Labour Court recording its finding on the validity or otherwise of the domestic enquiry conducted by the respondents against the petitioner.

It is the case of the petitioner that the Labour Court having held that the domestic enquiry conducted by the respondents against the petitioner is valid, has directed him to submit arguments, and in view of its direction to submit arguments, the Labour Court is not permitting him to adduce evidence on other issues. The Labour Court having held that the domestic enquiry conducted by the respondents against the petitioner is valid, cannot call upon the parties to submit arguments without permitting the parties to adduce evidence on other issues. In that view of the matter, the part of the order of the Labour Court, which directed the parties to submit arguments, is set aside. The petitioner, now shall file an application before the Labour Court, indicating the issues to be raised by him and what all evidence, he would like to produce, and if any such application is filed, the Labour Court shall pass appropriate orders, permit the petitioner to adduce evidence on other issues, and thereafter, consider the same in the light of the evidence that may be adduced by the parties, and after submission of arguments, pass appropriate award in the I.D.

With the above observations, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 8th June, 2006.

Nsr/Ksr